

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KEVIN MITCHELL,	:	CIVIL ACTION
	:	
Petitioner,	:	
	:	
v.	:	NO. 06-5069
	:	
	:	
LOUIS FOLINO, SUPERINTENDENT,	:	
et al.,	:	
	:	
Respondents.	:	

**MEMORANDUM**

BUCKWALTER, S. J.

September 25, 2007

Petitioner has filed objections to the Report and Recommendation of Magistrate Judge Henry S. Perkin.

First, he argues that the evidence to convict was insufficient, but this argument is clearly without merit. While he alleges that the Commonwealth failed to disprove that he acted in self defense, the review of the evidence set forth in pages 7 through 9 of the Report and Recommendation clearly refutes this argument.

In his second objection, petitioner claims trial counsel was ineffective for failing to call character witnesses. But, petitioner never disputes the finding that there was no evidence that he informed counsel or counsel should have otherwise known of such witnesses. This and the non-prejudicial aspect as cited in pages 15 and 16 of the

Report and Recommendation correctly disposes of petitioner's contention relative to character witnesses.

The remaining objective revolves around petitioner's claim that trial counsel was ineffective for failing to assert a diminished capacity claim. Essentially, the Pennsylvania Superior Court concluded the claim was without merit (see pp. 16-17 of Report and Recommendation). The magistrate judge in addition to quoting from the Superior Court also conducted his own thorough analysis as to why the Superior Court's determination was a reasonable one.

In brief, petitioner's objections tend to be simply a rehash of the arguments initially presented prior to the Report and Recommendation and all of which were thoroughly considered and correctly resolved by the magistrate judge.

An order follows.

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et al.,	:	
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Respondents.	:	

**ORDER**

AND NOW, this 25<sup>th</sup> day of September, 2007, upon careful and independent consideration of the petition for writ of habeas corpus, the response thereto, and after review of the Report and Recommendation of United States Magistrate Judge Henry S. Perkin dated August 30, 2007, and petitioner's objections filed September 17, 2007, it is hereby ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED;
2. The petition for Writ of Habeas Corpus is DENIED with prejudice and DISMISSED without an evidentiary hearing; and
3. There is no probable cause to issue a certificate of appealability, since petitioner has failed to make a substantial showing of the denial of any constitutional right.

BY THE COURT:

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RONALD L. BUCKWALTER, S.J.